

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WP(C).No. 35179 of 2007(K)

PETITIONER:

P.VASANTHA, D/O.KUNHIRAMAN, AGED 37
YEARS, RESIDING AT "SONA", ERANHOLI,
THALASSERY, KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

1. THE SECRETARY,
THALASSERY MUNICIPALITY, THALASSERY,
KANNUR DISTRICT.
2. THE TOWN PLANNING OFFICER,
THALASSERY MUNICIPALITY,
THALASSERY, KANNUR DISTRICT.
3. THE THALASSERY MUNICIPALITY
REPRESENTED BY THE SECRETARY,
THALASSERY MUNICIPALITY, THALASSERY,
KANNUR DISTRICT.
4. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT,
LOCAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 TO R3 BY SRI.I.V. PRAMOD, SC.

R4 BY SRI.K.J.MOHAMMED ANZAR, SR. GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 35179 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE REGISTERED PARTITION DEED DATED 30.6.07
REGISTERED AS DOCUMENT NO.1657/07 OF SRO KADIRUR.

EXT.P2 : TRUE COPY OF THE REJECTED PLANS WITH THE ENDORSEMENT
"REJECTED", MADE BY THE SECOND RESPONDENT.

EXT.P3 : TRUE COPY OF THE ORDER DATED 22.10.07 REJECTING THE APPLICATION
FOR APPROVAL OF BUILDING SITE AND GRANT OF BUILDING
CONSTRUCTION PERMIT ISSUED BY THE SECOND RESPONDENT.

EXT.P4 : TRUE COPY OF THE LETTER DATED 17.11.07 AND THE PLAN SHOWING THE
ALIGNMENT OF THE PROPOSED ROAD, ISSUED BY THE INFORMATION
OFFICER OF THALASSERY MUNICIPALITY.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 35179 OF 2007

Dated this the 12th day of December, 2007

JUDGMENT

The grievance of the petitioner is that his application for building permit has been rejected by the Municipality on the ground that a portion of the plot is proposed to be acquired for the purposes of a proposed road. The issue, in my opinion, is covered by the judgment of a Division Bench of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] and the judgment of the Supreme Court in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222].

Under these circumstances, I dispose of the Writ Petition directing the Municipality to reconsider Ext.P3 and issue permit to the petitioner, if the plan is otherwise in order and the proposal for the new road shall not be a reason for rejecting the same. The above directions however will be conditional on the petitioner's filing an undertaking in the form of an affidavit before the Secretary of the Municipality stating that in the event of any notification under Section 4(1) of the Land Acquisition Act being promulgated for acquisition of any portion of the petitioner's property within 9 months from today, he will not be claiming any compensation whatsoever as value of the building to be put up on the strength of the permit to be issued. Fresh orders will be issued on the

permit application within one month of the petitioner filing affidavit as directed above. It is needless to mention that even after the expiry of 9 months, in the event of any genuine public purpose, it will be open to the Municipality to acquire the property in question. Under such a contingency the petitioner will be entitled for adequate compensation not only for the land but also for the building to be constructed by him.

PIUS C. KURIAKOSE, JUDGE

btt

